

than the standard rate."¹⁰¹ In this regard, the Applicants claim that only 22 percent of MCI's customers purchase service at the basic rate and that "those using the standard rate tend to spend little on long distance."¹⁰²

In contrast to the Applicants' claims, Dr. Harris reports that an independent study has shown that 63 percent of all consumers are not enrolled in a savings plan.¹⁰³ This finding casts doubt on the reliability of MCI's estimate, which is based on proprietary data that have not been placed on the public record.¹⁰⁴ In any event, even if MCI's internal figures were accurate, the study referenced by Dr. Harris shows that the majority of consumers industry-wide do not subscribe to a savings plan and thus pay the lock-step prices. Moreover, WorldCom and MCI have introduced no evidence that even those customers who do subscribe to "discount" plans are paying competitive rates.¹⁰⁵ As Dr. Harris explains in his Affidavit, long distance rates, even under the discount plans, are well above long-run incremental cost, and it is part of industry culture to create the impression of competition by offering discounts off of inflated rates.¹⁰⁶

¹⁰¹ Hall Declaration at 15.

¹⁰² Hall Declaration at 17.

¹⁰³ Harris LD Affidavit at 31.

¹⁰⁴ *Id.*

¹⁰⁵ Schmalensee and Taylor demonstrate (at 5) that, even taking discounts into account, the rates paid by AT&T's average residential customer have increased by 14 percent since 1991.

¹⁰⁶ Harris LD Affidavit at 30. As an aside, the Applicants suggest that, if there are

(Continued...)

E. The Stock Market and Analysts Confirm That the Merger Would Diminish Long Distance Competition.

In determining whether the merger is likely to have an adverse effect on long distance consumers, the Commission need not rely solely on the economic and legal arguments of petitioners. The stock market and Wall Street analysts confirm that the combined company will face reduced competition and thus be more highly valued by investors (though not consumers) than either company standing on its own.

With regard to the stock market, BellSouth noted in its Petition to Deny that the movement of stock market prices after the announcement of the WorldCom/MCI merger suggested that the merger will have anticompetitive effects.¹⁰⁷ WorldCom and MCI deny that there is any evidence to support this claim, but they are plainly wrong.¹⁰⁸ After the merger, the stock prices of the merging companies and their long distance competitors increased substantially, while market prices generally changed little.¹⁰⁹ Since stock prices are, in part, a reflection of companies' future earnings, these increases reflect the expectation that these earnings will increase both for WorldCom

(...Continued)

excess profits in the residential long distance market because of a lack of competition, then GTE and the BOCs should be competing outside their regions. Joint Reply at 45. However, such competition is in fact beginning to occur. If it is not as pervasive as WorldCom and MCI believe it should be, the most likely reason is that it is difficult to make inroads in the retail mass market without a well-known brand. Thus, the Applicants' argument only confirms that there are significant barriers to entry in the retail market.

¹⁰⁷ BellSouth Petition at 18.

¹⁰⁸ Joint Reply at 40 n. 59.

¹⁰⁹ See Exhibit 33 to Dr. Harris's Affidavit.

and MCI and other interexchange carriers.¹¹⁰ If the primary effect of the merger were increased efficiencies, only the WorldCom and MCI stock prices should increase; the other IXCs' prices should decrease.¹¹¹

The analyst community agrees. Merrill Lynch, for example, is bullish on WorldCom precisely because the merger will reduce pricing pressure in the long distance and local markets. Specifically, Merrill Lynch stated that the merger will "reduce . . . the level of intra-industry competition in both the US LD and local markets via the reduction in the number of major competitors."¹¹² Its analysts further predicted "a slightly more rational approach to residential marketing expenditures and pricing with a new focus on profitability, rather than a single minded pursuit of pure market share."¹¹³ This assessment powerfully refutes their claims that the merger will not harm long distance competition and consumers.

* * *

WorldCom and MCI have failed to discharge their obligations under the *Bell Atlantic/NYNEX* standard. Most importantly, they have provided no evidence or

¹¹⁰ That is, "the market has already assimilated the increased earnings that will flow from the greater margins extracted from hybrids and resellers, and in turn, their customers. This skew reflects the expectation that the merger will be good for all carriers which own, in whole or in part, facilities-based networks. Such a development suggests that the proposed merger is highly anticompetitive." Harris LD Affidavit at 33.

¹¹¹ Harris LD Affidavit at 45.

¹¹² Merrill Lynch, In-Depth Report (WorldCom, Inc.), Feb. 4, 1998, at 2 (hereafter "Merrill Lynch WorldCom Report") (attached to the Ex Parte Notice filed by CWA in Docket No. 97-211 on February 19, 1998).

¹¹³ Merrill Lynch WorldCom Report at 2.

documentation to demonstrate that the combination of the second and fourth largest IXC's (in terms of overall interexchange revenues) and the elimination of the only major maverick supplier of wholesale capacity to resellers would not adversely affect long distance competition and consumers. In reality, "[t]his merger is likely to raise prices, both by reducing retail competition among the reduced number of firms, and by limiting the growth of the resale channel."¹¹⁴ If approved, the merger would likely "reduce the welfare of consumers that are served by interexchange resellers . . . of interexchange consumers in general, and of the potential customers who would be denied additional choices in the marketplace."¹¹⁵

III. WORLDCOM AND MCI HAVE FAILED TO REFUTE PETITIONERS' CLAIM THAT THE MERGER IS LIKELY TO RESULT IN INCREASED MARKET POWER IN INTERNATIONAL TELECOMMUNICATIONS MARKETS.

In its Petition, GTE demonstrated that the proposed merger will have serious anticompetitive effects in the international end-user and input markets. In accordance with the Commission's merger standards, GTE identified the relevant product and geographic markets and thoroughly examined the competitive effects of the merger. Further, GTE showed through a basic HHI analysis that the merger is likely to increase market power in the relevant markets.

The Applicants have done nothing to refute GTE's showing. They certainly do not provide any specific illumination of possible pro-competitive effects. Rather,

¹¹⁴ Harris LD Affidavit at 3.

¹¹⁵ Harris LD Affidavit at 3.

WorldCom and MCI attempt to dilute the direct and adverse effects of the merger by, *inter alia*, confusing and obfuscating the relevant product markets, ignoring geographic markets, and failing to rebut compelling HHI analyses. WorldCom and MCI clearly have not carried their burden of demonstrating that, in the international market, the merger will have pro-competitive benefits and will serve the public interest.

A. The Applicants' Analysis of the International Retail Product Markets Is Extensively Flawed.

In its Petition, GTE demonstrated that the merger would significantly increase market concentration in two separate product markets: (1) international private line services and (2) international message telephone services ("IMTS").¹¹⁶ The Applicants challenge this conclusion on the grounds that private line services and IMTS constitute a single end-user product market.¹¹⁷ This assertion flatly contradicts the FCC's *International Competitive Carrier* precedent.¹¹⁸ Indeed, the Commission has long treated IMTS and private line services as separate and distinct product markets and has not modified this approach. WorldCom and MCI offer no logical reason why the Commission's established policy of treating these end-user markets separately would not apply here.

¹¹⁶ GTE Petition at 30-34.

¹¹⁷ Joint Reply at 56-58.

¹¹⁸ See *International Competitive Carriers Policies*, 102 F.C.C.2d 812, 821-23 (1985), *recon. denied*, 60 Rad. Reg. (P&F) 2d 1435 (1986), modified 7 FCC Rcd 577 (1992).

Nor should the agency entertain WorldCom/MCI's plea to reverse *International Competitive Carrier*. The agency's treatment of these two product lines as separate markets stems from the conclusion that the two services are not substitutable, have distinct characteristics, and are designed to meet different customer needs.¹¹⁹ It is of no analytical value to say simply that IMTS and private line services "[can both] transport information electronically between two points."¹²⁰ Such a superficial approach ignores the different uses and characteristics of these products.

Private line services, for example, generally are offered on a flat-rate basis, while IMTS is offered on a usage basis. In addition, unlike IMTS, private lines are dedicated between two or more points on a full-period, 24-hour basis, and often require dedicated local access arrangements. Private lines typically are used to form corporate private networks that are used only by the particular customer or group of customers. By contrast, the IMTS service provides the general public, on a per-call basis, connectivity from any phone on the public switched telephone network ("PSTN") to any other phone on the PSTN (sometimes called "any-to-any").

These distinctions between the two separate product markets are applicable throughout the different customer classes. For example, large, sophisticated businesses with numerous offices and substantial data needs are more likely to use a private line service than would a small business or residential customer. This choice is not only cost-effective because of the flat rate, but also provides the large business

¹¹⁹ See *id.*, 102 F.C.C.2d at 824-26.

¹²⁰ Joint Reply at 57.

customer with 24-hour access to one or more dedicated lines. This configuration also allows for ease of operation (e.g., fewer digits to dial), quality control, and more secure data transmission if the business is concerned about protecting confidential communications. Such features may not be available with IMTS because of its connection to the public switched network.

A medium-sized business with fewer employees and less stringent data transmission requirements, however, has different demands. Since the volume of traffic is likely to be less for such a business, the purchase of IMTS may be more appropriate and cost-effective. Moreover, a medium-sized business may not have the same security concerns as a large business, thereby making IMTS more suitable.

Finally, residential and small business customers have their own unique needs. Because these customers typically generate less voice and data traffic than businesses and have less of a need for secured connections, IMTS may be more suitable. In any event, the principal need of most residential and small business customers is the "any-to-any" connectivity that only IMTS provides. Thus, contrary to the Applicants' claim,¹²¹ the decision to use IMTS or private line services is not solely an economic choice; rather, there are other factors that customers consider when selecting telecommunications services to meet their needs.

In an attempt to bolster their erroneous assertion that private lines and IMTS constitute a single market, WorldCom and MCI state that [i]nternational private lines are increasingly used to provide switched services, whether through international simple

¹²¹ *Id.* at 57.

resale ("ISR") or virtual private networks."¹²² The Applicants' argument is misplaced and misleading. Simply stated, the Applicants have confused end-user (output) markets with input markets. Carriers resell private lines connected to the PSTN on both ends to provide message telephone services ("MTS") to end users. Thus, the services purchased by the end users are part of the IMTS product market, not the private line market. In contrast, private line *underlying facilities* and private line services used or resold in this manner are part of the "input" market for competing IMTS carriers. The market data and concentration figures herein already reflect the message toll services (including ISR) provided by underlying carriers *and* resellers.¹²³

Viewed as a retail product market, the issue is whether the expected *users* (large and small businesses, residential consumers) conceive of the two services as distinct. Because "any-to-any" connectivity still is fundamentally different from a private network that can only access pre-defined telephones, telephone users do not find IMTS and private lines substitutable.¹²⁴ Since expected users would differentiate between the two services provided – so much so that significant changes in prices for one would not necessarily affect demand for the other – the markets are clearly distinct.

¹²² *Id.* at 57. ISR is the resale of underlying private line facilities to provide IMTS.

¹²³ In the FCC data, underlying private lines appear as private line services and a reseller's use of such services to provide switched services is reflected in the IMTS data. See Blake & Lande, 1996 Section 43.61 International Telecommunications Data (Jan. 28, 1998).

¹²⁴ Even if a private network call (including virtual private networks ("VPN") or dedicated facilities) could travel "off-net" on one end of the transmission, such networks still cannot substitute for ubiquitous global "any-to-any" connectivity.

Finally, although GTE's analysis focused on private line services as an *end-user* product market, the Petition explained that this product line may constitute an input market under certain circumstances.¹²⁵ For example, there are large, sophisticated businesses and government users that must maintain secure and reliable communications and thus cannot use the PSTN. Such providers of closed-user groups and other networks carrying third-party traffic must rely upon private line facilities as an input and either construct or obtain private networks composed of leased private lines. The merger also threatens to stifle competition in this input market.¹²⁶

Finally, the Applicants also fail to assess how the merger will affect the various customer groups identified by the Commission (residential customers and small

¹²⁵ See GTE Petition at 35 n.68; see also Section III.D, *infra*. It should be noted that the Commission has never gathered data on that basis.

¹²⁶ WorldCom and MCI also misread the *BT/MCI Order* as supporting their claim that private line services and IMTS constitute a single, amalgamated market. The Applicants state that "in *BT/MCI II*, the FCC identified the end user market for U.S.-U.K. outbound international services as a relevant market, making no distinction between IMTS and international private line services." Joint Reply at 58.

The *BT/MCI Order* establishes no such rule. The issue before the Commission in the BT/MCI merger was whether to treat each BOC region as a separate market, not whether to treat private line services and IMTS as the same product market. See *BT/MCI II Order*, 12, FCC Rcd at 15376-77. Non-interconnected private line services were simply not part of the analysis. The Commission considered only the "outbound" international services market, which, by definition, is IMTS because there are separate directional aspects to MTS. A private line, however, is not "directional", it is a dedicated circuit between two points for continuous 24-hour use in either direction. Further, the Commission made clear that its treatment of all U.S.-U.K. outbound international services as a single market was merger-specific, *i.e.* "for purposes of analyzing *this* merger" only. *BT/MCI II Order*, 12 FCC Rcd at 15377. The Commission did not extend this analysis to the review of any other merger. Therefore, WorldCom's and MCI's application of this analysis to the instant merger is inappropriate.

businesses; medium-sized businesses; and large businesses).¹²⁷ As demonstrated above, these different customer segments have varying needs and uses for both private line services and IMTS. The proposed merger will affect small businesses and residential customers by diminishing competition in the provision of IMTS services, which could lead to higher prices. In addition, the increased market concentration in the private line market is likely to have adverse effects on large businesses and resellers, which typically use private line services. WorldCom's and MCI's failure to examine the merger's impact on the various customer groups is yet another deficiency in the applications contributing to their failure to sustain their burden of proof.

B. Contrary to Commission Precedent, the Applicants Have Failed To Analyze the Effects of the Merger for Each Separate Geographic Market for Private Line Services and IMTS.

As GTE demonstrated in its Petition, the Commission has long recognized that each country-to-country route is a separate relevant geographic market for IMTS and private line services.¹²⁸ The Applicants, however, continue to ignore the Commission's merger analysis standards. Rather than considering the effects of the merger on this basis, they improperly amalgamate all geographic markets into a single global market, encouraging the Commission to "examine MCI WorldCom's market position on a world-wide basis rather than making specific route-by-route findings."¹²⁹

¹²⁷ See *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20001-2.

¹²⁸ See *International Competitive Carrier Policies*, 102 F.C.C.2d at 828.

¹²⁹ Joint Reply at 58-59.

WorldCom and MCI offer no rationale as to why the Commission should abandon its long-standing approach to defining international geographic markets. Their failure to do so is understandable, given the startling increases in concentration on individual rates noted in Section III.D, below. By any reasonable standard, each country pair must be considered a separate geographic market because the supply choices facing consumers differ on each route. Once again, WorldCom and MCI attempt to undermine a reasonable and effective merger analysis by creating their own set of rules rather than by complying with those already established by the Commission. This effort to game the system should not be countenanced. At a minimum, the Commission should require the Applicants to address each geographic market for the IMTS and private line services markets where the HHI analyses reveal that the merger is likely to create or enhance market power.¹³⁰

¹³⁰ The Applicants try to dismiss the significance of GTE's HHI analyses by stating that they are only the first step in considering the competitive impact of a merger. *Id.* at 59. GTE does not dispute this point. However, as the *Merger Guidelines* state, "[m]arket concentration is a useful indicator of the likely competitive effects of a merger," and when markets are as concentrated as many of the international markets at issue here, an increase of only 100 points in the HHI creates a presumption that a merger is "likely to create or enhance market power or facilitate its exercise." *Merger Guidelines*, section 1.51. Thus, the HHI analyses are probative evidence that the merger will have anticompetitive effects in several international markets. In fact, the Commission has used HHI analyses in numerous contexts as a means of "measuring the significance of changes in market concentration." *Bell Atlantic/NYNEX Order*, note 254, citing *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 12 FCC Rcd 4358, 4420-4421 (1997); *Amendment of Parts 20 & 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, 11 FCC Rcd 7824, 7869-7873, 7899-7904 (1996). Indeed, the Commission's evaluation of the competitive effects of the *Bell Atlantic/NYNEX* merger included an HHI analysis. See *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20056-57. Although the Commission is not bound by the results of any HHI analysis, the agency considers it a helpful tool to "identify cases in which a merger

(Continued...)

C. The Applicants Have Not Satisfied Their Burden of Proof Regarding the Identification of the Most Significant Market Participants.

WorldCom and MCI suggest that the list of most significant market participants in the provision of international services is virtually inexhaustible. With respect to the private line and IMTS markets, the Applicants contend that there are hundreds of carriers, domestic and foreign, competing in these international markets.¹³¹ The Applicants include as part of this laundry list several carriers that have been granted authority to provide facilities-based service from the U.S. to international points (e.g., Telstra, Cable & Wireless plc, British Telecommunications plc, etc.).¹³² With respect to the international transport market, the Applicants again proffer an overstated list of significant competitors. For example, in the transatlantic region, they identify AT&T, Sprint, British Telecommunications, Cable & Wireless, Deutsche Telekom, Teleglobe, etc. as competitors. The Applicants describe these entities as "carriers [that] currently hold, or will soon be eligible to hold . . . a Section 214 authorization to provide facilities-based U.S. international services."¹³³

WorldCom and MCI have not satisfied their burden of proving that the number of most significant competitors in any of the product markets is as large as they claim.

(...Continued)
significantly aggravates or creates highly concentrated markets." *Id.*, 20056.

¹³¹ Joint Reply at 59.

¹³² *Id.* at 59-60.

¹³³ *Id.* at 64.

The authority to provide service is hardly equivalent to actually serving customers. WorldCom's and MCI's tally, as they calculate it, would encompass nearly every company on the globe; such a vast list is clearly unrealistic. Indeed, in the *Bell Atlantic/NYNEX Order*, the Commission held that certification alone is insufficient to find that a carrier has the capabilities and incentives to compete effectively and therefore be identified as a most significant competitor.¹³⁴ Here, some of the carriers identified by the Applicants have yet even to receive approval to provide international services.¹³⁵

The realities of the market prove that the universe of significant market participants able to enter and serve quickly the relevant markets is much narrower than that set forth by the Applicants. AT&T, MCI, Sprint, and WorldCom are the carriers most able to exert pressure on each other to lower prices or innovate services. The private line, IMTS, and transport markets are all dominated by these four facilities-based carriers. The Big 4 account for more than 93 percent and 98 percent of total revenues in the private line and IMTS markets, respectively. In addition, in the TAT-12/13 market, the Big 4 account for 73 percent of the revenues. It is clear that although there may be a number of entities providing international services or seeking to enter the market, the universe of *most significant* competitors is limited.

¹³⁴ See *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20029.

¹³⁵ As discussed in Section II above, entry must be "timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern" to be considered in a competitive analysis. *Merger Guidelines*, Section 3.0.

D. The Applicants' Claim That the Merger Will Not Have Anticompetitive Effects in International Retail and Wholesale Markets Is Not Persuasive.

1. WorldCom and MCI Have Ignored the Tremendous Increase in Concentration that the Merger Would Cause on a Multitude of Country-Specific Routes.

An examination of recent FCC data continues to demonstrate that a WorldCom/MCI merger would create substantial overlaps in specific private line service and IMTS geographic markets. Indeed, the HHI analysis shows that the merger will likely create or enhance market power under the merger guidelines in an astounding 73 private line markets, 18 of which are in Europe. (See Appendix 6, Tables 1-9 and Maps) Further, in nine country markets, the post-merger HHI would be 10,000, indicating that the combined entity would enjoy a monopoly in private line services between the United States and these countries.¹³⁶ (*Id.*)

An analysis of specific geographic markets for IMTS also reveals a telling story. As previously demonstrated by GTE, the proposed merger will result in significant market overlap in the geographic markets for IMTS.¹³⁷ Based on more recent Commission data, the merger is "likely to create or enhance market power" in at least 41 markets where WorldCom's and MCI's IMTS services currently overlap, including eight markets in Europe. (See Appendix 7, Tables 1-9 and Maps) In addition, in 24

¹³⁶ The post-merger HHI for private line services would be 10,000 in the following nine countries: Albania, Angola, Cameroon, Congo, Hungary, Kazakhstan, Kenya, Paraguay, and Saint Helena.

¹³⁷ See GTE Petition at 34.

other markets (including six in Europe), the proposed merger would "raise significant competitive concerns" under the merger guidelines. (*Id.*)

The Applicants have provided no information to refute the compelling showings in GTE's Petition, which are only further supported by the Commission's recent data. The absence of such data makes precise assessment of the possible consequences of the proposed transaction virtually impossible. Consistent with its practice, the Commission should require the Applicants to address each geographic market for both private line services and IMTS.

2. Even If the Applicants' Overbroad Geographic Market Definition Were Correct, the Merger Still Would Be Likely To Create or Enhance Market Power.

Even assuming that MCI and WorldCom were correct in defining a global geographic market, the merger would still substantially increase concentration, to the point where it would be considered likely to create or enhance market power. The Applicants try to discount GTE's showing that the merger will reduce competition in the IMTS market by implying that the data underlying the HHI showing are outdated.¹³⁸ After GTE filed its Petition on January 5, 1998, the Commission issued a new report updating international telecommunications data. The Commission's 1996 Section 43.61 International Telecommunications Data¹³⁹ permitted GTE to update its figures with the most recent, and corrected, Commission information. These new figures are presented

¹³⁸ See Joint Reply at 60.

¹³⁹ Blake & Lande, 1996 Section 43.61 International Telecommunications Data (Jan. 28, 1998)

below, and in Appendices 6 and 7, and should be employed in lieu of the data in GTE's original Petition.¹⁴⁰ In any event, the new data confirm GTE's initial showing that the merger would increase market concentration and be likely to result in market power in both the private line and IMTS markets.

a) Total Private Line Services Market

Much in line with GTE's previous showing, the Commission's data demonstrate that the overall international private line services market is already highly concentrated, with a pre-merger HHI of 2722. (See below, Table 1) This merger would combine the second- and third-ranked carriers, by revenue, to create a company that surpasses AT&T as the current market leader. After the merger, a combined WorldCom and MCI would have a 44.53 percent market share. (See below, Table 2) Moreover, the merger would increase the HHI by 909 points to 3631, resulting in a presumption that the proposed combination is "likely to create or enhance market power."

¹⁴⁰ GTE calculated the carrier shares using U.S. carrier revenues as a proxy for market share.

Table 1 - Pre-Merger International Private Line Market

Carrier	Revenue	Market Share Percentage
AT&T	\$ 261,473,067	39.58%
MCI	\$ 189,554,148	28.69%
WorldCom	\$ 104,654,355	15.84%
Sprint	\$ 59,632,755	9.03%
All Others	\$ 45,355,322	6.86%
World	\$ 660,669,647	
Pre-Merger HHI		2,722

Table 2 - Post-Merger International Private Line Market

Carrier	Revenue	Market Share Percentage
MCI/WorldCom	\$ 294,208,503	44.53%
AT&T	\$ 261,473,067	39.58%
Sprint	\$ 59,632,755	9.03%
All Others	\$ 45,355,322	6.86%
World	\$ 660,669,647	
Pre-Merger HHI		3,631
Change in HHI		909

b) Total IMTS Market

The FCC's most recent figures (see below, Table 4) show that a merger between WorldCom and MCI would create a carrier with a 27.5 percent share of the market. This would substantially decrease competition in the IMTS market and remove from the field one of the most significant competitors to AT&T.¹⁴¹ Such a highly concentrated market would be fertile ground for coordinated pricing among the top players.

These concerns are clearly reflected in the HHI figures. The overall effect of the proposed merger would be to increase concentration in the market. The IMTS market prior to the merger has an HHI of 4,354, far greater than the private line market, and is already considered "highly concentrated." (See below, Table 3) If the merger were permitted, the HHI for the IMTS market would increase to 4,481, an increase of 127,

¹⁴¹ Particularly in view of the newly released Commission statistics, GTE disputes the Applicants' preliminary revenue estimates contained in their Reply. Joint Reply at 60. However, no matter what data are used, one fact remains – this newly merged entity would rank second behind AT&T, and there would be one less effective competitor in the market.

which is considered by the merger guidelines likely to create or facilitate market power.

(See below, Table 4)

**Table 3 - Pre-Merger International
Message Toll Service**

Carrier	Revenue	Market Share Percentage
AT&T	\$ 8,558,833,025	60.13%
MCI	\$ 3,549,539,984	24.94%
Sprint	\$ 1,493,416,401	10.49%
WorldCom	\$ 363,726,482	2.55%
All Others	\$ 268,566,561	1.89%
World	\$14,234,082,453	
Pre-Merger HHI		4,354

**Table 4 - Post-Merger International
Message Toll Service**

Carrier	Revenue	Market Share Percentage
AT&T	\$ 8,558,833,025	60.13%
MCI/WorldCom	\$ 3,913,266,466	27.49%
Sprint	\$ 1,493,416,401	10.49%
All Others	\$ 268,566,561	1.89%
World	\$14,234,082,453	
Pre-Merger HHI		4,481
Change in HHI		127

c) Hypothetical Combined Market

As detailed above, GTE submits that WorldCom and MCI have not supported their claim that, contrary to established Commission precedent, IMTS and private line services should be considered a single output market. GTE notes, however, that even were the agency to adopt this unwarranted view, the figures do not support the proposed transaction. Were the private line and IMTS markets combined, as the Applicants suggest, the HHI figures still demonstrate that the merger will adversely affect competition. Indeed, even in a hypothetical combined market, the HHI increases from 4256 to 4413, an increase of 157. (See below, Tables 5 and 6) This increase also is considered "likely to create or enhance market power" by the merger guidelines, and is greater than the increase in the IMTS market alone. Thus, the Applicants' own approach further confirms that the proposed merger would have adverse effects on the international markets.

**Table 5 - Pre-Merger International
Combined Markets**

Carrier	Revenue	Market Share Percentage
AT&T	\$ 8,820,306,092	59.22%
MCI	\$ 3,739,094,132	25.10%
Sprint	\$ 1,553,049,156	10.43%
WorldCom	\$ 468,380,837	3.14%
All Others	\$ 313,921,883	2.11%
World	\$14,894,752,100	
Pre-Merger HHI		4,256

**Table 6 - Post-Merger International
Combined Markets**

Carrier	Revenue	Market Share Percentage
AT&T	\$ 8,820,306,092	59.22%
MCI/WorldCom	\$ 4,207,474,969	28.25%
Sprint	\$ 1,553,049,156	10.43%
All Others	\$ 313,921,883	2.10%
World	\$14,894,752,100	
Pre-Merger HHI		4,413
Change in HHI		157

3. The Merger Would Threaten To Undermine Competition in the Wholesale International Transport Market.

In its Petition, GTE demonstrated that the proposed merger would create market power and increase barriers to entry for competitive U.S. carriers in the international transport input market.¹⁴² GTE defined the relevant product and geographic markets; identified the most significant market participants; and analyzed the adverse effects of the merger. In responding to GTE's showing, the Applicants have failed to demonstrate that the merger will not have anticompetitive effects on the international transport market.

WorldCom and MCI assert that the existence of present and future capacity is a safeguard to protect against anticompetitive effects.¹⁴³ This claim is flawed for a number of reasons. First, contrary to the Applicants' claims,¹⁴⁴ there is not substantial

¹⁴² GTE Petition at 35-42.

¹⁴³ Joint Reply at 62-65.

¹⁴⁴ *Id.* at 63.

extra capacity in this input market. While it is true that, as WorldCom and MCI note, new cables are being planned,¹⁴⁵ there is a serious shortage today. Moreover, cable capacity expected in the near future will be owned substantially by the existing carriers, especially by WorldCom.¹⁴⁶ This suggests that a merger between two of the largest four holders of international capacity can only increase concentration and the likelihood for coordinated action.

Such a combination also would force new carriers to obtain underlying capacity – an input market – from a small group of entities that are also the new carriers' most significant competitors in offering services – the output markets. This raises the question of the changing incentives a merged WorldCom/MCI-MCI might have when faced with a request for capacity from a carrier that proposes to use that capacity to compete with the merged entity and the two other established carriers.

Second, the Applicants' assertion that GTE improperly used TAT-12/13 as a proxy for total transatlantic capacity¹⁴⁷ is without merit. The Commission itself uses TAT-12/13 – the most recent common carrier cable in service in the Atlantic region – as

¹⁴⁵ *Id.* at 63.

¹⁴⁶ Indeed, the most recently approved new cable – the Southern Cross system between the United States and Australia/New Zealand – “will be owned and operated exclusively by MFSI”, a WorldCom subsidiary, on the U.S. side. In the Matter of MFS International, Inc., DA 98-272, at 3 (rel. Feb. 13, 1998).

¹⁴⁷ Joint Reply at 63.

a reasonable proxy for concentration in the Atlantic region.¹⁴⁸ MCI did not object to this approach in the BT/MCI merger, and should be estopped from doing so here.

Third, the HHI analysis evidences a real danger of increased market concentration in the transport market. The TAT-12/13 data provided in GTE's Petition demonstrated that the market is already considered concentrated, and that a combined WorldCom/MCI would have an 18 percent market share of the overall ownership interests and a total U.S.-end circuit allocation of 34 percent.¹⁴⁹ The post-merger HHI for the TAT-12/13 U.S.-end circuit market would increase by 344 points to 2251.¹⁵⁰ (See below, Tables 7 and 8) Under the merger guidelines, the proposed merger is presumed likely to create or facilitate the exercise of market power in the input market for international transport.

¹⁴⁸ See *BT/MCI II Order*, at 12 FCC Rcd at 15390, 15402-03 TeleGeography 1996/1997, Global Telecommunications Traffic Statistics & Commentary at 61 (Gregory C. Staple ed. 1996/1997).

¹⁴⁹ GTE Petition at 38-39.

¹⁵⁰ GTE Petition at 39.

Table 7 - Pre-Merger TAT-12/13 U.S.-end MIUS Assignments¹⁵¹

AT&T	1298	32
MCI	1131	28
Sprint	275	7
WorldCom	247	6
Others	1081	27
Pre-merger HHI		1907

Table 8 - Post-Merger TAT-12/13 U.S.-end MIUS Assignments

WorldCom/MCI	1378	34
AT&T	1298	32
Sprint	275	7
Others	1081	27
Post-merger HHI		2251
Post -merger HHI Delta		344

Finally, the Applicants' suggestion that any current capacity shortage is merely temporary is overstated.¹⁵² Considering the rapid pace at which the Internet is consuming circuits, the remaining capacity on the new cables is likely to be insufficient. The proposed merger will only exacerbate this shortage

* * *

In sum, the Applicants have not even attempted to meet their burden of proving that the merger will have pro-competitive benefits in the international market. Failing

¹⁵¹ The source for the table is the June 1997 TAT-12/13 Schedules. MIUS is a measure of the minimum amount of cable capacity available to a carrier that is an initial purchaser.

¹⁵² See Joint Reply at 63-64.

that, WorldCom and MCI have not refuted evidence that the merger would substantially increase concentration and diminish competition in several relevant markets. Rather than address the relevant product and geographic markets and perform a credible competitive effects analysis, the Applicants seek to shift the burden to petitioners and ignore Commission standards. Given the paucity of proof as to how the merger could serve the public interest in an open and competitive international telecommunications marketplace, the Commission has no choice but to reject the proposal out of hand or, at a minimum to designate the applications for hearing.

IV. WORLDCOM AND MCI HAVE FAILED TO PROVIDE SUFFICIENT DATA AND EVIDENCE TO ADDRESS, LET ALONE REBUT, THE SHOWING OF SUBSTANTIAL ANTICOMPETITIVE IMPACT OF THE MERGER ON THE INTERNET MARKETPLACE.

WorldCom and MCI have failed to carry their burden of demonstrating that the proposed merger will have pro-competitive benefits that outweigh any adverse impact on the Internet marketplace. In response to petitioners' and other commenters' showings of substantial competitive concerns,¹⁵³ WorldCom and MCI continue to refuse

¹⁵³ See Response of GTE Service Corporation, Its Affiliated Telecommunications Companies and GTE Internetworking in Support of Petitions to Deny, CC Docket No. 97-211 (Jan. 26, 1998) ("GTE Response"); Response of the Alliance for Public Technology, CC Docket No. 27-211, 2 (Jan. 26, 1998) ("APT Response"); Reply Comments of the Coalition of Utah Independent Internet Service Providers, CC Docket No. 97-211, 1-3 (Jan. 26, 1998) ("CUIISP Reply"); Reply Comments of the Communications Worker of America, CC Docket No. 97-211, 4-12 (Jan. 26, 1998) ("CWA Reply"); Reply Comments of Consumer Project on Technology, CC Docket No. 97-211, 2 (Jan. 26, 1998) ("CPT Reply"); Response of Simply Internet, Inc. and Request for Additional Pleading Cycle, CC Docket 97-211 (Jan. 26, 1998) ("Simply Internet Response"); Response of the United States Internet Providers Association, CC Docket No. 97-211 (Jan. 26, 1998) ("USIPA Response"); Comments of AFL-CIO, CC Docket Nos. 97-2494, 97-211, 3-5 (Jan. 5, 1998); Petition To Deny the Application of
(Continued...)

to disclose market data necessary for the Commission to rule on their application. Instead, they offer only misleading characterizations of the relevant market, unsupportable claims regarding their combined market share, and hollow attempts to dispute the merits of the other parties' arguments.

Should the Commission determine to reach the merits of the WorldCom and MCI applications notwithstanding their willful refusal even to attempt to satisfy the standards of the *Bell Atlantic/NYNEX Order*, GTE submits that the record evidence already available to the Commission establishes that they cannot meet those standards. Indeed, both the European Commission ("EU") and the DOJ have already signaled their concerns about the competitive consequences of the merger. Following an initial inquiry, on March 4th the EU launched an extended antitrust investigation of the proposed merger, focusing on its anticompetitive impact in Internet-related markets.¹⁵⁴ Similarly, DOJ recently expanded its probe into the market concentration consequences of the merger.¹⁵⁵

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WorldCom or, in the Alternative, To Impose Conditions of Bell Atlantic, CC Docket No. 97-211, 3-13 (Jan. 5, 1998) ("Bell Atlantic Petition"); Petition for Conditional Approval of the Applications of WorldCom, Inc. for Transfers of Control of MCI Communications Corporation of BellSouth, CC Docket No. 97-211, 19-20 (Jan. 5, 1998) ("BellSouth Petition"); Comments of Communications Workers of America, CC Docket No. 97-211, 4-16 (Jan. 5, 1998) ("CWA Comments"); Petition to Deny of Inner City Press/Community on the Move, CC Docket No. 97-211, 8-11 (Jan. 5, 1998) ("ICP/COTM Petition"); Petition To Deny and Request for Hearing of Simply Internet, Inc., CC Docket No. 97-211 (Jan. 5, 1998) ("Simply Internet Petition"); Comments of Telstra Corporation Limited, CC Docket No. 97-211 (Jan. 5, 1998) ("Telstra Petition").

¹⁵⁴ *Digest, International*, "The European Commission," *Wash. Post*, E12, Mar. 5, 1998.

¹⁵⁵ John R. Wilke and Jared Sandberg, "WorldCom, MCI Probe Is Widened," *Wall Street* (Continued...)

The same issues should concern the Commission.¹⁵⁶ GTE and others demonstrated in their earlier filings that the proposed merger indisputably threatens to create a dominant Internet backbone network whose owners would have both the incentive and opportunity to degrade their rivals' services and raise costs for both providers and consumers.¹⁵⁷ In opposition to these showings, WorldCom and MCI contend that: (1) the Internet backbone market is not distinguishable from the Internet access services and transmission services markets; (2) various petitioners' and commenters' use of market share data is inaccurate; (3) the merged entity will have at most a 20 percent share of the relevant market; (4) the ownership of key "network access points" ("NAPs") does not threaten competition; and (5) increased capacity on

(...Continued)

Journal A3, Mar. 10, 1998.

¹⁵⁶ As GTE has previously explained, the Commission should address the impact of the merger on the Internet as part of its public interest review of the proposed transaction. See GTE Response at 1.

¹⁵⁷ See GTE Response; Alliance for Public Technology Response at 2; CUIISP Reply at 1-3; CWA Reply; Consumer Project on Technology Reply at 2; Simply Internet Response; USIPA Response; AFL-CIO Comments at 3-5; Bell Atlantic Petition at 3-13; BellSouth Petition at 19-20; CWA Comments at 4-16; ICP/COTM Petition at 8-11; Simply Internet Petition; Telstra Comments.

The Applicants go so far as to suggest that the Internet community is not even concerned with the prospect of the merger. WorldCom-MCI Joint Reply at 77-78. The number and nature of petitions and comments opposing the merger from all segments of the Internet community shows the fallacy of this assertion. See GTE Response; Alliance for Public Technology Response at 2; CUIISP Reply at 1-3; CWA Reply; Consumer Project on Technology Reply at 2; Simply Internet Response; USIPA Response; AFL-CIO Comments at 3-5; Bell Atlantic Petition at 3-13; BellSouth Petition at 19-20; CWA Comments at 4-16; ICP/COTM Petition at 8-11; Simply Internet Petition; Telstra Comments.